

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MAIGA HRALIMA,

Petitioner,

vs.

ISIDRO BACA, *et al.*,

Respondents.

3:14-cv-00005-LRH-WGC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#4) for leave to file a longer petition and for initial review under Rule 4 of the Rules Governing Section 2254 Cases. The filing fee has been paid.

Background

Petitioner Maiga Hralima seeks to set aside his 2003 Nevada state conviction, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon, in No. CR 02-1574 in the state district court.

On May 13, 2009, this Court denied petitioner's prior petition in No. 3:08-cv-00214-ECR-RAM as untimely. The Court of Appeals denied a certificate of appealability on May 24, 2010, in No. 09-16249 in that court.

Since that time, this Court has rejected two actions by petitioner seeking to pursue a second or successive proceeding in the district court. The Court of Appeals further has denied petitioner permission to pursue a second or successive petition four times, over and above denying relief with respect to the two district court dismissals.

1 This Court dismissed the petition in No. 3:09-cv-00722-RCJ-RAM as successive by an order
2 and judgment entered on March 10, 2010. The Court of Appeals denied a certificate of appealability
3 on May 24, 2010, in No. 10-15770 in that court.

4 The Court dismissed the proceeding in No. 3:13-00088-MMD-VPC as successive by an order
5 and judgment entered on June 17, 2013. The Court of Appeals thereafter dismissed petitioner's appeal
6 and denied writ relief, in Nos. 13-17117 and 13-72520 respectively in that court.

7 The Court of Appeals further has denied petitioner permission to pursue a second or successive
8 petition in the following proceedings in that court on the following dates:

9 12-73214 11-08-2012

10 12-70393 04-09-2012

11 11-73379 01-10-2012

12 11-72387 10-19-2011

13 The Court further notes in passing that the Court dismissed petitioner's effort to challenge his
14 conviction in a civil rights action in No. 3:09-cv-00708-ECR-RAM as *Heck*-barred, and the Court of
15 Appeals affirmed in No. 10-15863 in that court.

16 Review of the state district court's online docket record confirms that an amended judgment of
17 conviction has not been filed therein since the dismissal of No. 3:08-cv-00214-ECR-RAM as untimely.

18 Moreover, review of the Ninth Circuit's online docket records confirms that petitioner has not
19 been granted permission to pursue a second or successive petition in any other proceeding.

20 ***Discussion***

21 Under 28 U.S.C. § 2244(b)(1) & (2), a claim in a "second or successive petition under section
22 2254" must be dismissed if it was presented in a prior petition; and, if the claim was not presented in
23 the prior petition, it may be considered only in the circumstances delineated in § 2244(b)(2). Under 28
24 U.S.C. § 2244(b)(3)(A), before a second or successive petition is filed in the district court, the applicant
25 must move in the Court of Appeals for an order authorizing the district court to consider the petition.
26 If an earlier federal petition is dismissed as untimely, any subsequent petition challenging the same
27 judgment of conviction or sentence will constitute a second or successive petition. *See, e.g., McNabb*
28 *v. Yates*, 576 F.3d 1028 (9th Cir. 2009)

1 Further proceedings herein prior to a dismissal of the petition, as amended, as successive would
2 be futile and an imprudent application of limited judicial resources. The Court reaches the same
3 conclusion with respect to transfer of the petition to the Court of Appeals rather than dismissal.

4 The Court further finds that designating petitioner as a restricted filer on the docket of this
5 particular action is warranted to avoid further frivolous usurpation of limited judicial resources. The
6 Court will direct the Clerk to return any further filings herein other than a notice of appeal from this
7 order.

8 IT THEREFORE IS ORDERED that petitioner's motion (#4) for leave to file a longer petition
9 is GRANTED, subject to the remaining provisions of this order, and that the Clerk of Court shall file
10 the amended petition submitted with the motion.

11 IT FURTHER IS ORDERED that the petition, as amended, shall be DISMISSED without
12 prejudice as a successive petition.

13 IT FURTHER IS ORDERED that a certificate of appealability (COA) is DENIED and that the
14 Clerk shall clearly reflect on the docket the denial of a COA by this order. Jurists of reason would not
15 find the district court's dismissal of the petition as successive to be debatable or wrong. Prior efforts
16 by petitioner to pursue a successive proceeding have been rejected twice in the district court and a total
17 of six times by the Court of Appeals, including in reviewing the prior two district court dismissals.

18 IT FURTHER IS ORDERED that the Clerk shall designate petitioner a restricted filer on the
19 docket sheet for this action and shall return any further papers submitted by petitioner for filing in this
20 action other than a notice of appeal from this order.

21 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
22 prejudice.

23 DATED this 2nd day of June, 2014.

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25 
26 LARRY R. HICKS
27 UNITED STATES DISTRICT JUDGE
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